

CHAPTER NO. 21

HOUSE BILL NO. 2062

By Representatives Shepard, Tidwell

Substituted for: Senate Bill No. 1983

By Senator Jackson

AN ACT to authorize Hickman County to levy and collect a privilege tax on new residential, industrial and commercial development in the County in order to provide that new residential, industrial and commercial development contribute its fair share of the cost of providing public facilities and services made necessary by such new development.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

WHEREAS, Hickman County, Tennessee, has been growing at an accelerated rate during the last few years, having been impacted by the rapid growth in the standard metropolitan area of Nashville and Middle Tennessee in general; and

WHEREAS, anticipated growth is expected to continue and accelerate due to growth in Nashville and Middle Tennessee and to the recent and expected industrial growth in Hickman County and neighboring areas; and

WHEREAS, it is expected that the County's population will continue to increase causing a demand for approximately three hundred fifty (350) additional dwelling units per year; and

WHEREAS, projected growth and land use development will cause an increased demand for county-provided capital facilities such as schools, roads, jails, parks, county government facilities, solid waste convenience centers, etc.; and

WHEREAS, the County's present revenue raising authority is limited by state legislation and relies heavily on intergovernmental transfers which are not subject to county control, and on property taxes, which would impose the cost of new growth on existing residents rather than on new residents and businesses who create the demand for the additional expenditures; and

WHEREAS, Hickman County is committed, for the benefit of both present and future county residents, to maintaining a level of public facilities and services commensurate with those presently provided; and

WHEREAS, Hickman County is prepared to impose a fair, equitable and reasonable share of the costs of providing the necessary public facilities and services on existing residents of the County; and

WHEREAS, the County's present population, employment base, tax base and budget cannot alone support the additional revenues needed to supply facilities to serve new growth without a substantial increase in the property tax rate on existing development; and

WHEREAS, the continued expansion of the Nashville metropolitan area represents both an extraordinary economic opportunity for the State of Tennessee as well as a potential economic burden on the existing residents of Hickman County; and

WHEREAS, due to these circumstances, it is necessary and appropriate that Hickman County be given authorization to extend its taxing power to enable the County to impose a fair and reasonable share of the costs of public facilities necessitated by new residential, industrial and commercial development on that residential development so as not to create an unfair and inequitable burden on existing county residents; and

WHEREAS, there is precedent in the State of Tennessee for such additional tax measures to impose costs on those who benefit the most from improvements and where the result would otherwise be to impose an unfair burden on existing residents; and

WHEREAS, the most logical and effective mechanism to accomplish the intended result would be the imposition of a new privilege tax on new residential, commercial and industrial development in Hickman County to be known as a "land development privilege tax"; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the Hickman County Land Development Privilege Tax.

SECTION 2. As used in this act, unless a different meaning appears from the context:

(a) "Appeals board" means the board established in Hickman County to hear appeals from the public regarding the Land Development Tax.

(b) "Building" means any structure built for the support, shelter or enclosure of persons, chattels or movable property of any kind, which is to be used as a residence; the term includes a mobile home and those buildings identified in Section 2(f) and Section 2(l), but excludes those buildings specified in Section 6 below.

(c) "Building inspector" means the person designated by resolution of the Governing Body of Hickman County who shall be responsible for ensuring a dwelling unit does not exceed the square footage paid for at the time of obtaining a certificate of occupancy.

(d) "Capital improvement program" means a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government operating expense, for the purchase, construction or replacement of the physical assets of the community are included.

(e) "Certificate of occupancy" means a license for occupancy of a building or structure issued in Hickman County, whether by the county or by any city therein. Such certificate shall not indicate compliance with any federal, state or local building codes.

(f) "Commercial" means the development of any property for the purpose of retail sales of goods and/or services.

(g) "Development" means the construction, building, reconstruction, erection, betterment or improvement of land providing a building or structure which provides the floor area for residential, commercial or industrial use.

(h) "Dwelling unit" means a room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease on a daily, weekly, monthly or longer basis; physically separated from any other room or rooms or dwelling units which may be in the same structure; and containing independent cooking and sleeping facilities.

(i) "Floor area" means the total of the gross horizontal area of all floors, including basements, cellars or attics which is heated and/or air conditioned living space in dwelling units, or designed to be finished into heated and/or air conditioned living space in dwelling units at a future date, or all usable square footage for commercial and industrial use, regardless of it being heated and/or air conditioned.

(j) "General plan" means the official statement of the Hickman County Long Range Planning Committee, adopted by the Governing Body, which sets forth goals and objectives for the development of public facilities in Hickman County.

(k) "Governing Body" means the County Commission of Hickman County.

(l) "Industrial" means the development of any property for the purpose of manufacturing a product for retail or wholesale distribution.

(m) "Major street or road plan" means the plan adopted by the Hickman County Highway Commission and ratified by the Governing Body of Hickman County, showing among other things, "the general location, character and extent of public ways and the removal, relocation, extension, widening, narrowing, vacating, abandonment or change of use of existing public ways...".

(n) "New" means new to Hickman County.

(o) "Person" means any individual, firm, copartnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate or other group or combination acting as a unit, and includes plural as well as the singular number.

(p) "Place of worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, that a place of worship does not include buildings or portions of buildings which are used for purposes other than for worship and related functions or which are or are intended to be leased, rented or used by persons who do not have tax-exempt status.

(q) "Public building" means a building owned by the State of Tennessee or any agency thereof; a political subdivision of the State of Tennessee, including, but not necessarily limited to, counties, cities, school districts and special districts; or the federal government or any agency thereof.

(r) "Public facility or facilities" means a physical improvement undertaken by the county, including, but not limited to, the following: roads and bridges; parks and recreational facilities; jails, workhouses and law enforcement facilities; schools; libraries; government buildings; fire stations; sanitary landfills; convenience centers; water, wastewater and drainage projects; airport facilities

and other governmental capital improvements benefiting the citizens of the county and/or city.

(s) "Residential" means the development of any property for an inhabitable dwelling unit or units.

(t) "Subdivision regulations" means the regulations proposed by the Hickman County Highway Commission and adopted by the Governing Body of Hickman County, as subsequently amended, by which the County regulates the development of streets and roads in a proposed residential development.

SECTION 3. It is the intent and purpose of this act to authorize Hickman County to impose a tax on new residential, industrial and commercial development in the County payable at the time of issuance of a building permit or certificate of occupancy so as to ensure and require that the person responsible for new residential, industrial and commercial development shares in the burdens of growth by paying the person's fair share for the cost of new and expanded public facilities made necessary by such development.

SECTION 4. Engaging in the act of residential, commercial and industrial development within Hickman County, except as provided in Section 6 herein, is declared to be a privilege upon which Hickman County may, by resolution of the governing body, levy a tax in an amount not to exceed the rate set forth in Section 7.

SECTION 5. The Governing Body shall impose the tax authorized herein by resolution after adopting a capital improvements program indicating the need for the cost of public facilities anticipated to be funded, in part, by this tax and after finding that the need for such public facilities is reasonably related to new development in the County. The resolution of the Governing Body imposing this tax shall state the rate of tax on new residential, commercial and industrial development. The Governing Body shall, by resolution, adopt administrative guidelines, procedures, regulations and forms necessary to properly implement, administer and enforce the provisions of this act.

SECTION 6. This act shall not apply to development of:

(a) Public buildings.

(b) Places of worship.

(c) Barns and outbuildings used for agricultural purposes.

(d) Replacement structures for previously existing structures destroyed by fire or other disaster, natural or otherwise.

(e) Additions to a single-family dwelling, including, but not limited to, modifying a single-wide mobile home into a double-wide mobile home.

(f) A structure owned by a nonprofit corporation which is a qualified 501(c)3 corporation under the Internal Revenue Code.

(g) Permanent residential structures replacing mobile homes where the mobile home is removed within thirty (30) days of the issuance of the certificate of occupancy for the permanent residential structure, provided, that the permanent structure is a residence for the owner and occupant of the mobile home and that owner and occupant has resided on the property for a period of

not less than three (3) years. Any net increase in the gross square footage, however, shall be subject to the tax.

(h) Buildings moved from one site within the County to another site within the County, without changing ownership, and provided that the tax was already paid on the structure at the initial site.

SECTION 7. For the exercise of the privilege described herein, Hickman County may impose a tax on new residential, industrial and commercial development, including residential, industrial and commercial development in incorporated municipalities in the County. The tax shall be an amount not to exceed one dollar (\$1.00) per gross square foot for residential development and twenty-five cents (25¢) per gross square foot for industrial and/or commercial development, or a minimum tax of fifteen hundred dollars (\$1,500), whichever is greater.

SECTION 8. If a residential, industrial or commercial development for which this tax has already been levied is moved or torn down and is replaced by another larger structure, only the gross square footage which has been gained by such replacement shall be taxed.

SECTION 9. The tax established in this act shall be collected at the time of application for a certificate of occupancy for residential, industrial and commercial development. No certificate of occupancy as herein defined shall be issued in Hickman County unless the tax has been paid in full to the County or a negotiable instrument, approved by the County Attorney and payable to the County, has been received.

SECTION 10. All tax funds collected shall be used for the purpose of providing public facilities, the need for which is reasonably related to new residential, industrial and commercial development and shall be deposited into the Adequate Facilities/Development Tax Fund.

SECTION 11. The authority to impose this privilege tax on new residential, industrial and commercial development in Hickman County is in addition to all other authority to impose taxes, fees, assessments or other revenue-raising or land development regulatory measures granted either by the private or public acts of the State of Tennessee, and the imposition of such tax, in addition to any other authorized tax, fee, assessment or charge, shall not be deemed to constitute double taxation.

SECTION 12.

(a) Any person aggrieved by the decision of the county building official or other responsible official concerning any aspect of this act may obtain review of the official's decision in the following manner:

(1) By payment of the disputed amount to Hickman County and by notifying the official that the payment is made under protest.

(2) By requesting an appeal of the decision of the official in written form within ten (10) days of the protest and payment. Appeals shall be heard by the Appeals Board, or any other statutorily designated board established to hear such appeals. A hearing shall be scheduled within forty-five (45) days of the written request for appeal.

(b) The Appeals Board shall render a decision on all hearings within thirty (30) days of the hearing date, unless the hearing is continued from time to time by a majority vote of the board for further information.

(c) The Appeals Board shall act as a quasi-judicial body whose purpose is to determine the intent of the act, its applicability to the appellant and to rule upon the interpretation of the official. The board shall not be bound by formal rules of evidence applicable to the various courts of the State.

(d) Hearings before the board shall proceed as follows:

(1) The building official shall explain his or her ruling and the reasons for the ruling.

(2) The appellant shall explain his or her reasons for protesting the ruling.

(3) The board may request further information from any County official, including, but not limited to, the County executive, County commissioners or committee members, the County attorney, or the County building inspector. The board does not have the power to subpoena.

(4) The board shall deliberate and render a decision by a majority vote. Decisions shall be reduced to writing and copies shall be sent to all parties and shall become a part of the minutes of the board. Decisions of the Adequate Facilities Appeals Board shall be final, except that either the building official or the person aggrieved may seek review of the board's actions by certiorari and supersedeas to the Chancery Court of Hickman County, Tennessee, provided, that an application to the court is made within sixty (60) days of the written decision of the board.

SECTION 13. The provisions of this act shall not be changed or modified, including setting the rate, raising the rate or lowering the rate without a two-thirds (2/3) majority vote of the Hickman County Legislative Body.

SECTION 14. The provisions of this act shall in no manner repeal, modify or interfere with the authority granted by any other public or private law applicable to Hickman County. This act shall be deemed to create an additional and alternative method for Hickman County to impose and collect taxes for the purpose of providing public facilities made necessary by new residential, industrial and commercial development in the County.

SECTION 15. If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 16. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the County Legislative Body of Hickman County before June 30, 2003. Its approval or nonapproval shall be proclaimed by the presiding officer of the County Commission and certified by such officer to the Secretary of State.

SECTION 17. For the purpose of approving or rejecting the provisions of this act, it shall become effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 16.

PASSED: March 20, 2003


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 2nd day of April 2003


PHIL BREDESEN, GOVERNOR